

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID RUSSELL,

Petitioner,

v.

9:02-CV-0940
(LEK/DEP)

THOMAS L. RICKS, Superintendent of Upstate
Correctional Facility; and GLENN GOORD,
Commissioner of DOCS,

Respondents.

APPEARANCES:

OF COUNSEL:

DAVID RUSSELL
Petitioner, *pro se*

HON. ELIOT SPITZER
New York State Attorney General
Attorney for Respondents

MICHAEL G. McCARTIN, Esq.
Assistant Attorney General

LAWRENCE E. KAHN, U.S. District Judge

DECISION AND ORDER

Petitioner David Russell (“Petitioner” or “Russell”) filed a petition for a writ of habeas corpus with the Court on July 18, 2002. Petition (Dkt. No. 1). On August 7, 2002, Petitioner filed an Amended Petition. Amended Petition (Dkt. No. 6). By Order of this Court filed on May 31, 2006, the Amended Petition was denied and dismissed. May 2006 Order (Dkt. No. 27). Judgment was entered in favor of Respondents on May 31, 2006. Judgment (Dkt. No. 28). Petitioner filed a Notice of Appeal on June 27, 2006. Notice of Appeal (Dkt. No. 29). Presently before the Court is a Motion for a Certificate of Appealability (“COA”) filed by Petitioner. Motion (Dkt. No. 30).

Section 2253(c)(1) of Title 28 of the United States Code provides, in pertinent part, that

[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.

28 U.S.C. § 2253(c)(1).¹

Furthermore, the Court may issue a Certificate of Appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of the file, and for the reasons set forth in this Court’s May 31, 2006 Order, the Court finds that Petitioner has failed to make the required showing. Therefore, the Court denies his Motion.

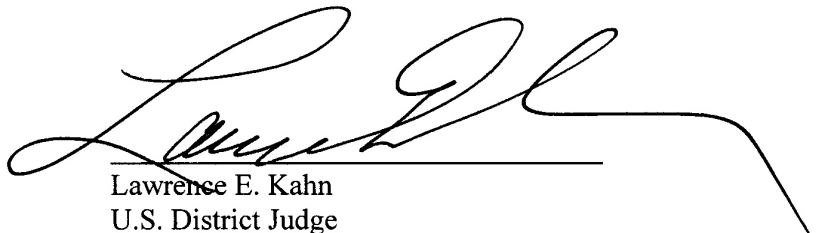
WHEREFORE, it is hereby

ORDERED, that Petitioner’s Motion for a Certificate of Appealability (Dkt. No. 30) is **DENIED**; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order upon the parties.

IT IS SO ORDERED.

DATED: August 01, 2006
Albany, New York


Lawrence E. Kahn
U.S. District Judge

¹ Likewise, Rule 22 of the *Federal Rules of Appellate Procedure* provides, in pertinent part, that “[i]n a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” FED. R. APP. P. 22(b)(1).